

messaging services to locate terminal equipment within Southern Bell central offices.

These technical barriers, which are entirely within BellSouth's control, preclude fair competition. In order for other voice messaging services to provide their service to its full competitive potential, certain special call forwarding features -- Call Forward/Busy Line ("CF-BL") and Call Forward/Don't Answer ("CF-DA") -- must be publicly accessible.¹¹ Although there is testimony that these features have been available to Southern Bell since 1979, and have been requested repeatedly by voice messaging services since at least 1987, Southern Bell did not begin to offer these features to voice messaging services until Southern Bell was on the brink of releasing MemoryCall. Hearing Transcript at 283-84 (Saner testimony); 529, 535 (Daniel testimony).

Under Open Network Architecture ("ONA"), new features like CF-BL and CF-DA should be made available on a

11/ Most voice messaging service customers must manually forward their lines to the messaging company. However, with these two special call forwarding functions, available almost exclusively to Memory Call, forwarding is done automatically. CF-BL allows voice messaging service providers to receive their client's overflow calls automatically when a busy condition exists. CF-DA allows voice messaging service providers to receive their client's call automatically if the client does not answer within a prescribed number of rings. Both features provide increased customer convenience and better service. Hearing Transcript at 68-71 (Burgess Testimony).

cost basis to whomever needs them as soon as they are technically feasible. As this Commission explained in its Computer III order:

We consider Open Network Architecture to be the overall design of a carrier's basic network facilities and services to permit all users of the basic network, including the enhanced service operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and "equal access" basis. A carrier providing enhanced services through Open Network Architecture must unbundle key components of its basic services and offer them to the public under tariff, regardless of whether its enhanced services utilize the unbundled components.

Third Computer Inquiry, Report and Order, 104 F.C.C.2d 958, 1019 (1986) ("Computer III") (emphasis added).

The Commission felt so strongly about ONA that it stated: "We consider the development of Open Network Architecture the focal point of this proceeding. We conclude that the implementation . . . of Open Network Architecture plans, approved by this Commission, is a precondition for complete elimination of the structural rules for these carriers." Computer III, 104 F.C.C.2d at 1020.

The Georgia proceeding confirms that BellSouth has a view of ONA all its own. According to BellSouth's manager for ONA product development, it should make new services available only when it plans to offer an enhanced service that can use them. Hearing Transcript at 533 (Daniel

testimony) ("ONA says when we use those services ourselves, we are required to make them available"). BellSouth's position is nothing less than an acknowledgment that it views its own outside business ventures as its primary franchise motivation, not the service demands of its captive telephone ratepayers.^{12/}

In addition, when Southern Bell's MemoryCall was launched, it implemented CF-BL and CF-DA in a way that was compatible only with its own MemoryCall service and incompatible with the facilities of most voice messaging services.^{13/} Order at 27 ("Southern Bell's trial offer of

^{12/} The Petition provides a further example of BellSouth's self-interested approach to enhanced services when BellSouth threatens to withdraw MemoryCall from the market if its demands are not met. Petition at 26, n.37. BellSouth implies that thousands of residential customers would be deprived of a valuable service if that were to occur. Of course, voice messaging services attractive to the residential market would have been available years ago if BellSouth had made CF-BL and CF-DA available when voice messaging services first requested them. Asked why BellSouth had not made the services available previously, BellSouth's Georgia witness responded, "I don't know." Hearing Transcript at 535 (Daniel testimony).

^{13/} The essential call forwarding features, CF-DA and CF-BL, are not compatible with most 1AESS switches. Therefore, if the Southern Bell central office for a voice messaging service is served by a 1AESS switch, these features are unavailable unless a voice messaging service has a special new technology, a "multi-line hunt group." Hearing Transcript at 69 (Burgess testimony); 340 (Dunn testimony). MemoryCall is one of the only voice messaging services with this technology. Hearing Transcript at 340 (Dunn testimony). BellSouth has only recently begun to modify 1AESS switches to make them compatible with voice messaging service equipment, and did not begin to do so
(continued...)

MemoryCall was undertaken in a manner that, due to technical barriers, meant that competitors to MemoryCall could not use the local network, except to provide service significantly inferior to MemoryCall"). Finally, Southern Bell denied other voice messaging services the advantages accruing from co-location.^{14/}

Consistent with this record, the Georgia PSC concluded that Southern Bell discriminated in favor of

13/ (...continued)
until confronted in the Georgia MemoryCall proceeding. Thus, network architecture entirely within BellSouth's control determines whether CF-DA and CF-BL are available to competing voice messaging services.

Southern Bell asked that its "test" of MemoryCall be conducted in the Atlanta area. Suspiciously, at the time MemoryCall was initially offered, 33 of the 48 Georgia offices having 1AESS switches were located in Atlanta. The overwhelming majority of all voice messaging services, as many as 98 percent, operate in Southern Bell offices with 1AESS switches and therefore cannot compete effectively with MemoryCall. Hearing Transcript at 69-70 (Burgess testimony). Southern Bell acknowledged that it has an unfair advantage in these locations -- yet it refused to forego targeting these areas until such time as it made the switch modifications necessary to permit others to compete. Hearing Transcript at 509 (Daniel testimony).

14/ Southern Bell places its MemoryCall equipment and hardware within Southern Bell central offices. This reduces the cost of MemoryCall by eliminating the need for a local transport link for the service and also increases the quality of voice mail. The voice messaging services have requested that they be permitted to co-locate their hardware in Southern Bell central offices. Southern Bell concedes that co-location of services is an advantage derived from its monopoly position. Hearing Transcript at 503 (Daniel testimony). However, Southern Bell refuses to permit co-location of other voice messaging services. Hearing Transcript at 71 (Burgess testimony); 502 (Daniel testimony).

MemoryCall with respect to the availability of call forwarding features necessary for voice messaging. Order at 27 (discussing "discriminatory access to the local network"). It found that, as a result of discriminatory access to services, other competitors could not provide anything but "grossly inferior" service. Order at 28-30. The Georgia PSC also concluded that Southern Bell had an unfair advantage in that it co-located its voice messaging equipment in the Southern Bell telephone central offices but refused to allow others to do likewise. Order at 30-31 (Southern Bell "refuses to allow MemoryCall competitors to co-locate their [voice messaging] equipment in [Southern Bell's] central offices, thereby perpetuating a distinction in product quality and price that disadvantages competitors of MemoryCall"). Finally, the Georgia PSC found "disturbing" Southern Bell's failure to provide essential services until years after their availability. Order at 31-34 ("[T]he evidence suggests the possibility that [Southern Bell] manipulated development of the local network, especially the timing of unbundling certain network features necessary for MemoryCall to be offered at all, in order to maximize its competitive advantage").

C. Pricing Abuses

The evidence presented also suggests that Southern Bell has engaged in substantial cross-subsidies, shifting

the costs of MemoryCall to ratepayers. Because Southern Bell has failed to provide cost data on MemoryCall, as ordered by the Georgia PSC in Georgia Public Service Commission Docket No. 3896-U, it is not possible to complete an analysis of whether Southern Bell is engaging in predatory pricing to drive out competition. However, given the fact that MemoryCall is priced at as little as one-half the price of its competitors, the Georgia PSC Staff concluded that Southern Bell "may be charging a price below its cost of providing MemoryCall [and] that there is not complete competition for the MemoryCall service." Hearing Transcript at 75-76 (Burgess testimony); 98 (Madan testimony).

The Georgia PSC also concluded that the marketing, technical and pricing practices described above raised concerns as to whether Southern Bell was cross-subsidizing MemoryCall, i.e., shifting the costs of MemoryCall to the ratepayers of the State of Georgia. Order at 41 ("Nothing in this record disproves the possibility that MemoryCall is cross-subsidized and/or predatorily priced. Rather, the record suggests the opposite possibility, namely that MemoryCall is priced below cost."). Southern Bell's refusal to produce adequate cost information, as it was twice previously ordered to do, prevented the Georgia PSC from conclusively determining the existence and extent of cross-

subsidization. Order at 41-42 ("The fact that the record in this case does not currently contain the data from which such an analysis can already be made is troubling. The Commission's [previous orders] required [Southern Bell] to file sufficient cost data demonstrating that the proposed rates for MemoryCall are just and reasonable. [Southern Bell] made no such filing.").

In sum, the record demonstrates and the Georgia PSC concluded that MemoryCall has exploited Southern Bell's monopoly position in the local exchange. By virtue of this monopoly, MemoryCall has superior access to customers, customer information, billing and essential regulated facilities and services. See Order at 35 ("In the Commission's view, these practices constitute marketing and other promotional activities that unfairly trade on [Southern Bell's] monopoly position to the immediate and irreparable harm of a competitive market"). In addition, the record before this Commission suggests that Southern Bell may be shifting costs to ratepayers and under-pricing its MemoryCall service.^{15/}

^{15/} It is noteworthy that MemoryCall is not offered outside the bounds of BellSouth's local exchange monopoly. BellSouth's Georgia witness testified that BellSouth believes that MemoryCall compares "favorably" with most and "better than some" voice mail services offered by other Bell companies, particularly that offered by Pacific Telesis Group. Hearing Transcript at 552-53 (Daniel testimony). However, when asked whether BellSouth had any plans to offer
(continued...)

IV. THE COMMISSION MUST RESPOND TO BELL SOUTH'S
REPEATED ABUSES OF ITS MONOPOLY STATUS

The record in this case graphically demonstrates that current Commission regulation of the Bell Companies is insufficient to prevent their exercise of monopoly power to impede competition in information services markets. BellSouth has established a pattern of abuse, both in its offering of MemoryCall and otherwise. It is imperative that the Commission act to prevent that abuse.

A. BellSouth Has Established a Clear Pattern of
Abuse of Its Monopoly Status

The discussion above makes it clear that BellSouth not only has the opportunity to engage in anticompetitive acts, but that BellSouth repeatedly has taken advantage of that opportunity. The MemoryCall proceeding is a vivid, well-documented example of BellSouth's abuses, but it is

15/ (...continued)
Memory Call "outside the area in which it has a government authorized monopoly over local exchange service" by, for example, competing with Pacific "since their service is inferior to yours," the witness responded that BellSouth has no such plans "because we think that the efficiencies that make [MemoryCall] so attractive to customers depend on our existing sales channels." *Id.* at 552-53. The witness identified these "efficiencies" as those that BellSouth enjoys by virtue of its local exchange monopoly. *Id.* at 553. *See id.* at 485, 489, 500-01, 502-03 (as a government authorized monopoly "we have certain efficiencies that are advantages to us," including "our sales channel," access to CPNI information and co-location).

hardly the only example. BellSouth's repeated exploitation of its monopoly status establishes a clear pattern of abuse.

1. The MemoryCall Proceeding Records
BellSouth's Pattern of Abuse

Southern Bell's petition to this Commission virtually ignores the trail of abuses documented in the Georgia PSC proceeding. Southern Bell contends that the "vast majority" of the proven abuses which prompted the Georgia PSC's decision are either "old issues," are "without merit," or "have already been satisfied." Petition at 26-29.^{16/} In fact, Southern Bell dedicates less than four pages of the Petition to countering the conclusions of the Georgia PSC that Southern Bell had consistently abused its monopoly position. Southern Bell would have this Commission ignore its pattern of abusive practices. Petition at 29 ("the Commission need not rehash the merit or lack of merit of Georgia telemessaging complaints in this proceeding").

^{16/} Similarly, in response to MCI's Motion for Leave to File Supplemental Opposition to Motions for Removal of the Information Service Restrictions, in which MCI sought to supplement the record before Judge Green with the decision of the Georgia PSC, Southern Bell suggested that the Georgia PSC had made only "passing reference to the possibility that Southern Bell might by its actions 'impede competition.'" Opposition of Bell Companies to MCI's Motion for Leave to File a Supplemental Opposition to Motions for Removal of the Information Service Restriction at 2 n.1, Civ. No. 82-0192 (D.D.C., July 2, 1991). As is evident from the discussion in Parts II and III, *supra*, this assertion is contradicted by the record and findings of the Georgia PSC.

Southern Bell incredibly goes so far as to claim that all complaints "have been fully addressed and satisfied to the extent that they raise any legitimate concerns." Id. To the contrary, as the Georgia PSC found, there is evidence that Southern Bell has failed to correct any of its abusive and anticompetitive practices.

To the extent that Southern Bell does attempt to provide excuses, explanations and promises of correction of the abuses found by the Georgia PSC, a review of Southern Bell's recent history puts the veracity of Southern Bell's responses into question. Southern Bell frequently presents an image to this Commission, and state commissions, as a fair minded competitor. But a close look at recent history suggests a portrait sharply at odds with that painted by Southern Bell.

As it did before the Georgia PSC, Southern Bell claims that certain marketing abuses were isolated incidents of maverick employees and that new procedures have rectified the problem. See, e.g., Georgia PSC hearing transcript at 444-45 (Daniel testimony) ("[w]e recognized that their concerns were valid and we feel like we've taken some new steps to address those concerns"). Before this Commission, Southern Bell has suggested that it worked "diligently" to resolve these problems. Petition at 27. However, as the record shows, despite promises of correction, these abuses

continued. Hearing Transcript at 578-79, 581 (Daniel testimony); Order at 38 ("such practices persist").

These and other abusive practices were previously the source of complaints before the Florida PSC that prompted Southern Bell to cease such practices in that state. Before the Georgia PSC, Southern Bell's witness testified that, despite similar 'problems' associated with the company's prior introduction of MemoryCall in Florida, Southern Bell took no steps to avoid a repetition of the abuses when Southern Bell later introduced MemoryCall in Georgia. Hearing Transcript at 548-49 (Daniel testimony).

Thus, although Southern Bell was well aware that the same abuses would be perpetrated in Georgia as in Florida, Southern Bell made no move in the direction of curbing such abuses until repeated complaints to the Georgia PSC left Southern Bell with no political alternative but to make gestures that it would begin to do so. Southern Bell's only explanation for its conduct was to acknowledge that it happened and that it was "an error" on the company's part. Hearing Transcript at 549 (Daniel testimony).

This record shows that mere promises from Southern Bell are insufficient comfort for its competitors who stake their livelihood on a level playing field. Few entrepreneurs will risk their capital on investments when Southern Bell controls when, or if, abuses will be

eliminated. BellSouth's marketing abuses can be truly eliminated only by the force of regulation.

2. BellSouth's Pattern of Abuse Extends Far Beyond MemoryCall

While the MemoryCall proceeding shows how BellSouth has abused its monopoly in one service, MemoryCall is not the only example. BellSouth's abuses extend far beyond MemoryCall and have been documented throughout its service area. When confronted with these abuses, BellSouth repeatedly claims they are "errors" or "mistakes," but the pattern of abuses shows, at the very least, that BellSouth willfully ignores the likely anticompetitive effects of its actions and corrects them only after injured parties complain to regulators.

Anticompetitive Tariffs: Even outright rejection of abusive practices does not deter BellSouth. In 1988, BellSouth was forced to withdraw a provision in its Comparably Efficient Interconnection (CEI) plan for voice messaging services that would have charged enhanced service providers on a bidirectional basis, greatly increasing their costs. Memorandum Opinion and Order, BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, 3 FCC Rcd 7284, 7288-290 (1988) ("BellSouth CEI Order"). Nevertheless, BellSouth attempted to impose the same bidirectional charges through a state tariff filed in

Georgia in 1989. The Georgia PSC ultimately rejected the tariff.

Discrimination in Availability of Services:

BellSouth has developed a record of discriminating against competitors in the availability of services. The most recent example is the Georgia billing and collection tariff, described above. See Note 7, supra. Despite repeated requests from other enhanced service providers for billing and collection services, BellSouth decided to make this tariff available only to voice messaging services. This is a reprise of BellSouth's attempt in its CEI plan to limit the availability of services depending on BellSouth's characterization of the user's needs. See BellSouth CEI Order at 7288-290. BellSouth did not, of course, provide any justification for limiting availability of its billing and collection tariff.

BellSouth has engaged in similar tactics since divestiture. Dun and Bradstreet, in its comments in the triennial review of the MFJ, noted that it was denied access to necessary facilities for its enhanced services by BellSouth. It was forced to pursue litigation and, ultimately, withdraw from the market. See Comments of Dun and Bradstreet Corporation on Department of Justice Recommendations, Civil Action No. 82-0192 at 35-36. These actions are consistent with BellSouth's view of ONA as

requiring services to be made available only when BellSouth wants to use them and in as limited a fashion as possible, not when they are technically feasible and certainly not when customers request them. See Part III(B), supra.

Cross-subsidization: Cross-subsidization also is not limited to MemoryCall. Audits of BellSouth operations by regulatory commission task forces have twice uncovered massive cross subsidies from regulated businesses to unregulated ventures. A 1985 audit found that the unregulated businesses receiving cross-subsidization included directory publishing and equipment sales. Report on the BellSouth Corporation, Special Accounting Task Force of the Southern Public Service Commissions, May 16, 1985. A 1990 audit found that directory publishing alone benefited from a \$240 million cross subsidy, and that BellSouth improperly accounted for costs associated with sales of phone products, lobbying expenses, corporate advertising and social organization memberships. Report on BellSouth and Affiliates, Executive Summary, SEARUC Southern Task Force, September, 1990.

As the Consumer Federation of America ("CFA") has detailed in the MFJ proceeding, cross-subsidization appears to be part of BellSouth's strategic business plan. CFA disclosed a BellSouth memo which described the advantages of covering the fixed costs of building fiber plant with

telephone services revenues in anticipation of later using those facilities for cable services. The result, of course, would have been higher costs for subscribers to regulated services and lower costs for BellSouth's future cable services. See United States v. Western Electric Co., Memorandum of Intervenor Consumer Federation of America Opposing Removal of Restrictions on the Provision of Information Services by the Bell Operating Companies, at 17-18.

Deception of Regulators: Perhaps the most disturbing aspect of BellSouth's conduct is that it often tries to deceive regulators. BellSouth's effort to characterize the Georgia PSC's MemoryCall proceeding as merely a jurisdictional dispute is a relatively minor example. In support of an accelerated depreciation filing in Georgia a less than two years ago, Southern Bell represented to the Georgia PSC that the FCC had agreed to the new rates. In fact, the FCC specifically had rejected those rates and approved a much slower depreciation schedule. Southern Bell said the latter's false claim was a mistake.

If this false claim was a mistake, then perhaps Southern Bell's falsifications of customer repair records in Florida over a period of several years also were mistakes. As the State Telephone Regulation Report explained,

falsification appears not only to have been widespread, but widely accepted within Southern Bell's repair facilities. State Telephone Regulation Report, Apr. 18, 1991 at 7-8.

These deceptions are not isolated incidents. BellSouth's continuing evasions led the staff of the Georgia PSC to conclude during a ratemaking proceeding in 1990 that BellSouth had been "flat dishonest" in its filings and could not be trusted to provide accurate data necessary to establish proper rates in Georgia. Staff Ten Brief on the Merits, Investigation of the Rates and Charges of Southern Bell Telephone and Telegraph Company, Rule Nisi Dkt. No. 3905-U, Georgia Public Service Commission, filed June 26, 1990, at 2, 51-52. BellSouth's refusal to provide accurate data on the most fundamental matters within the Georgia PSC's jurisdiction demonstrates a disturbing lack of respect for any regulatory authority.

Overall, BellSouth's actions, both in its offering of MemoryCall and in its other activities, evidence a clear pattern of abuse of its monopoly status. A company can only claim so many "mistakes" and "errors" before it becomes obvious that a conscious course of conduct is being pursued. Here, the evidence is overwhelming that BellSouth has abused and continues to abuse its status as the monopoly provider of local telephone service, to the detriment of competition and its captive ratepayers.

B. Based on the Record of BellSouth's Provision of MemoryCall, the Commission Should Revoke Its Acceptance of the BellSouth CEI Plan for Voice Messaging Services.

As the Commission explained when it approved the BellSouth CEI Plan, the CEI requirements seek "to achieve fairness and efficiency for all enhanced service providers competing with a carrier." BellSouth CEI Order, 3 FCC Rcd at 7284. The evidence in the Georgia MemoryCall proceeding establishes that BellSouth has failed to comply with the Commission's intent in establishing the CEI requirement and, further, has violated the provisions of its own plan requiring the availability of features like call forwarding to competing enhanced service providers.

These facts compel a reexamination of the BellSouth CEI plan and, at least, substantial revisions to the terms under which BellSouth offers voice messaging and other enhanced services. In light of the serious nature of BellSouth's violations, revocation of Commission approval of the plan and additional sanctions are warranted.^{17/}

First, the record shows that competing voice messaging providers do not have "equal and efficient access"

^{17/} Cox notes that BellSouth relies on Commission approval of its CEI plan as its authority to offer MemoryCall. Petition at 15. Thus, the validity of the CEI plan and BellSouth's compliance with it is material to the Commission's consideration of whether BellSouth should be granted any relief here and whether BellSouth's actions in Georgia warrant Commission sanction.

to the basic services offered by BellSouth, even though that is the purpose of CEI plans. Id. Instead, BellSouth has acted at every turn to prevent the fairness and efficiency called for by the Commission's CEI policies. BellSouth's exploitation of features of its network architecture to preclude competition, its refusal to make call forwarding features available to competitors even when they are technically feasible, its policies that shift the risks of customer defaults from MemoryCall to regulated services, the uneven availability of CPNI and all the other abuses described above had the effect of creating a completely one-sided market.

Thus, if assuring fairness and efficiency is the measure of the effectiveness of BellSouth's CEI plan, there can be little doubt it fails the test. The Commission should revisit its approval of the CEI plan and, at least, require modifications to prevent the kinds of abuses described above.

BellSouth's continuing pattern of abuses, not just in its offering of MemoryCall in Georgia, but in Florida, in other tariff filings, in cross-subsidizing other competitive services and in its lack of candor with regulatory agencies, also raises a serious question as to whether any CEI plan could be adequate to protect BellSouth's competitors. The Commission must take this pattern into account in evaluating

not only the inadequacies of BellSouth's current CEI plan for voice messaging, but any future filings. BellSouth's record of abuse, and especially its lack of veracity, makes it doubtful a suitable CEI plan can be devised.

The Commission also should revisit BellSouth's CEI plan to determine specifically what sanctions should be imposed for BellSouth's failure to make call forwarding features available to competing voice messaging services. Under the plan, call forwarding options, including CF-DA and CF-BL, were to be provided to competing services. BellSouth CEI Order at 7285. Nevertheless, BellSouth not only refused to make those features available when requested by independent voice messaging services, but even when it implemented CF-DA and CF-BL, did so in a way that was compatible only with its own MemoryCall service and incompatible with the facilities of most independent voice messaging services. See Note 13, supra.

In light of the importance of these features to voice messaging services, failure to make call forwarding options available is a serious violation of the CEI plan. BellSouth's actions assured that its competitors would be unable to offer the features most desired by voice messaging customers, even while they were fully available to MemoryCall.

BellSouth's efforts to create a tilted playing field and, in particular, its failure to make a crucial network feature available to its voice messaging competitors, demand a prompt and effective Commission response. Cox submits that revocation of the Commission's approval of the CEI plan is appropriate. A CEI plan that fails to assure fairness and efficiency is, for all intents and purposes, no CEI plan at all. When, as here, the failure of the plan affects the most basic parts of BellSouth's competitors' business, BellSouth should not be permitted to reap the benefits of its behavior.

C. The Commission Should Impose Sanctions for BellSouth's Admitted Violation of ONA Policies

Of BellSouth's abuses, none is more obvious than its violation of the Commission's Open Network Architecture policies. This violation independently justifies Commission sanctions.

As described in Part III above, BellSouth refused to make call forwarding features available to independent voice messaging service providers despite their technical feasibility. BellSouth's explanation was that ONA required only that services be made available when BellSouth needed them. See Part III(B), supra.

This, of course, is not the case. ONA requires carriers to "offer unbundled [features] to the public under

tariff, regardless of whether its enhanced services utilize the unbundled components." Computer III, 104 F.C.C.2d at 1019. BellSouth's refusal to offer call forwarding features, despite requests dating back to 1987, is inconsistent with this requirement.

BellSouth's obvious violation requires a Commission response. A forfeiture or some other Commission sanction is necessary to demonstrate the Commission's intent to enforce its basic enhanced services policies. Absent sanctions, BellSouth and other carriers could draw the conclusion that the Commission has no intention of enforcing its ONA policy.

D. The Commission Should Investigate BellSouth's Pricing and Marketing Policies in Order to Determine What Sanctions Should Be Imposed for BellSouth's Cross-Subsidization of MemoryCall

The Georgia MemoryCall proceeding presents ample evidence that BellSouth is cross-subsidizing MemoryCall. MemoryCall is priced so far below its competitors as to strain credulity. MemoryCall is positioned to take advantage of cross-subsidies in its purchases of billing and other BellSouth services. Perhaps most significant, BellSouth has refused to provide the Georgia PSC with the cost data necessary to determine with certainty the level of cross-subsidization.

These facts were important factors in the Georgia PSC's decision. The Commission should exercise its jurisdiction here to determine what sanctions should be imposed on BellSouth for its cross-subsidization of MemoryCall.

The Commission clearly has jurisdiction to investigate and impose sanctions. Regardless of the Commission's decision on BellSouth's Petition, cross-subsidization of MemoryCall affects interstate ratepayers.^{18/} The Commission has authority to regulate and oversee affiliate transactions like those between MemoryCall and BellSouth's regulated operations under Section 32.27 of the Commission's Rules. In addition, the Commission has an obligation under Section 201(b) of the Communications Act to ensure that the rates charged to consumers are just and reasonable. 47 U.S.C. § 201(b).

Here, the Commission should exercise its jurisdiction to investigate BellSouth's cross-subsidization of MemoryCall. There is more than sufficient evidence to justify an investigation. Moreover, the Commission, upon

^{18/} Cross-subsidization affects all ratepayers because cross-subsidization reduces BellSouth's regulated service revenues. Consequently, purchasers of regulated services, both interstate and intrastate, are required to make up the difference so that BellSouth may reach its revenue requirement. This can be true even under price caps, where cross-subsidization could, for instance, reduce the amount returned to ratepayers by sharing.

completion of its investigation, should impose forfeitures for BellSouth's violations of the requirements of Section 32.27 of the Rules and Section 201 of the Act. Much as the Commission determined in its investigation of NYNEX that NYNEX's distorted interaffiliate transactions raised "serious implications for ratepayers" who had been subjected to unreasonable rates, BellSouth's cross-subsidization raises equally serious issues for ratepayers and enhanced services competitors alike. See Order to Show Cause and Notice of Apparent Liability, New York Telephone Co., 5 FCC Rcd 866 (1990). The Commission must not let those issues lie unresolved. It should instead investigate BellSouth's provision of MemoryCall and impose appropriate sanctions for BellSouth's violations.

V. CONCLUSION

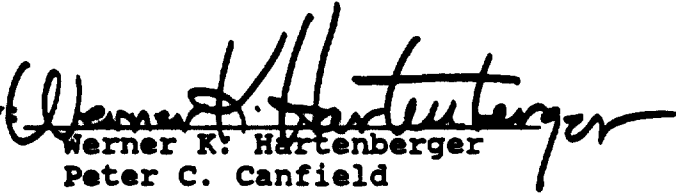
BellSouth's Petition brings to the Commission a case not of regulatory overreaching but of classic monopoly abuse. The record accompanying the Petition is a telling story of the alacrity with which the telephone companies, left unchecked, can enter markets and employ "integrated operations," i.e., monopoly advantages, to eliminate competition in what otherwise would be extremely competitive industries. Whatever the Commission decides regarding the jurisdictional issues raised by the BellSouth Petition, the Commission should recognize, as this case graphically

demonstrates, that current Commission regulation of the Bell companies is insufficient to prevent abuse of their monopoly power. The Commission should also exercise its enforcement powers to apply appropriate sanctions to BellSouth's documented and admitted abuses.

Respectfully submitted,

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EXHIBIT 1

**Cox Response to Southern Bell
Georgia Billing and Collection Tariff**